



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

**Attn: Mandatory Review, MC 4920 DAL
1100 Commerce Street
Dallas, TX 75242**

Release Number: 201343024

UIL: 501.07-01

Release Date: 10/25/2013

Legend:

ORG = Name of Organization

Date: March 6, 2009

Address = Address of Organization

EIN:

Year = xx

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

In a determination letter dated August, 1969, you were held to be exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code.

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(7) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20xx. This is a final adverse determination letter with regard to your status under section 501(c)(7) of the code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On August 25, 20xx, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(7) of the Code.

You are therefore required to file Form 1120, *U.S. Corporation Income Tax Return*, for the years ended December 31, 20xx and 20xx with the Ogden Service Center. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal

Appeals process The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Renee B. Wells
Acting Director, EO Examinations

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| Form 886A | Department of the Treasury - Internal Revenue Service Explanation of Items | Schedule No. or Exhibit |
| Name of Taxpayer ORG | | Year/Period Ended 20xx12 20xx12 |

LEGEND:

ORG = Name of ORG

State = Name of State

Partner = Name of For-Profit Partner

Year = xx

ISSUE

Whether the tax exempt status of an organization that operates a golf course, and engages in activities with the general public, should be revoked.

BRIEF EXPLANATION OF FACTS

The organization is recognized as a section 501(c)(7) tax exempt organization. According to its statement of exempt purpose, the organization is to maintain grounds suitable for the playing of golf and to promote social relations between its members. There are several classes of membership. These include Full, Full family, Senior, Monday – Friday, Junior Dependents, and Social. The club is located in State, and contains a club house/snack bar/banquet hall. The club entered into an agreement with Partner, ., whereas Partner is to operate the bar and banquet facilities of the club. The club would still pay utilities, etc. Partner paid the club \$ for this use in 20xx. All alcohol, food, hired help, etc., was provided by Partner.

The majority of the organizations income is generated through green fees, membership dues, cart rentals, and rental of the banquet hall/snack bar. The club advertises that golfing is open to the public. No records are kept showing member or non member participation.

A non member use test was performed based on records provided by the club. This test resulted in non member use of 0% (limited to %) in 20xx, 0% in 20xx, and 0% in 20xx. A non member income test was also performed. This test resulted in nonmember income of 0% (limited to %) in 20xx, 0% in 20xx, and 0% in 20xx. Green fees were determined to be all non member income, as member green fees are included in the member dues. Cart use is paid for by all, member or non member. No records are kept of this separation, so all cart rental income is determined to be non member. Likewise, as records per Revenue Procedure 71-17 are not kept, income from the rental to Partner, is also non member income.

LAW

Treasury Regulation 1.501(c)(7)(b)

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A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate, timber, or other products, is not organized and operated exclusively for pleasure, recreation, and other non profitable purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

P.L. 94-568

Social clubs are permitted to receive a certain amount of income from the general public and investments. "Substantially all" was substituted for "exclusively" in IRC 501(c)(7). (2) The following table explains the consequences of receiving income from outside of the club membership.

IF THE ORGANIZATION

THEN

Receives 35% of its receipts from investments

The organization may maintain its exemption under IRC 501(c)(7)

Receives no more than 15% of its gross receipts from nonmember use of club facilities and/or services

The organization may maintain its exemption under IRC 501(c)(7)

Receives ~~35%~~ of its gross receipts from outside its membership and no more than 15% of its gross receipts are derived from nonmember use of club facilities

The organization may maintain its exemption under IRC 501(c)(7)

Exceeds the 35% and/or 15% limitations

The organization may maintain its exempt status if it can show through facts and circumstances that substantially all of its activities are for "pleasure, recreation, and other nonprofitable purposes".

Rev. Rul. 60-324, 1960-2 C.B. 173.

Use by outside organizations—A social club exempt from Federal income tax under IRC 501(c)(7) may lose its exemption if it makes its club facilities available to the general public on a regular, recurring basis since it may then no longer be considered to be organized and operated exclusively for its exempt

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purpose.

Rev. Rul. 66-149, 1966-1 C.B. 146

holds a social club not exempt as an organization described in IRC 501(c)(7) where it regularly derives a substantial part of its income from nonmember sources such as, for example, dividends and interest on investments it owns.

Rev. Proc. 71-17, 1971-1 C.B.683.

Nonmember use of facilities; guidelines and recordkeeping requirements—Revenue Procedure 71-17 describes the record-keeping requirements for social clubs exempt under IRC 501(c)(7) with respect to nonmember use of their facilities; it sets forth guidelines for determining the effect of gross receipts derived from public use of the club's facilities on exemption and liability for unrelated business income tax.

Solicitation of the general public to utilize club facilities will disqualify the social club for tax exemption. **Keystone Automobile Club v. Commissioner; United States v. Fort Worth Club of Fort Worth, Texas, 345 F.2d 52; Polish American Club, Inc. v. Commissioner 33 T.C.M. 925.**

Revenue derived from non members is used to benefit members since the outside revenue permits the club to assess lower dues than would otherwise be required to support the clubs facilities and operations. **Pittsburgh Press Club v. United States** 579 F.2d at 761.

TAXPAYER'S POSITION

The Treasurer of the organization agrees that there is a substantial amount of non member income received by the country club. She has also stated that this income is needed to keep the club operating at a successful level. The Treasurer stated that with the Boards approval, she would agree to a revocation of exempt status, and have a CPA firm prepare Form 1120's for tax years 20xx and 20xx.

GOVERNMENT'S POSITION

Based on the facts of the examination, the organization does not qualify for exemption because it engages in a business which makes its social and recreational facilities available to the general public. The organizations solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. If the club exceeds the 15/35% test, it

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will maintain its exempt status only if it can show through facts and circumstances that "substantially all" of its activities are for pleasure, recreation, and other non profitable purposes. Facts and circumstances show that for the years of 20xx through 20xx the club has derived 0% to 0% of its income from non member sources.

CONCLUSION

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(7) and its tax exempt status should be revoked. A conference with IRS management was offered, but declined.

ALTERNATIVE ISSUE

In the alternative, if the organization qualifies for exemption under IRC 501(c)(7), should they be subject to the unrelated business income tax under IRC 512(a)(3)?

BRIEF EXPLANATION OF FACTS

The country club earns non member income through the selling of green fees, renting of golf carts, and the renting of its banquet hall and snack bar. Records are not kept per Revenue Procedure 71-17, concerning member and non member income. All of the expenses are related to either the golfing or rental income.

LAW

Section 511(a) of the Code provides for the taxation of unrelated business taxable income or organizations described in section 501(c).

IRC section 512(a)(3) provides for the taxation of all income other than exempt function income. Exempt Function Income is defined in IRC section 512(a)(3)(B) as "gross income from dues, fees, charges, or similar **amounts paid by members** of the organization **as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the Purposes constituting the basis for the exemption** of the organization to which such income is paid."

Non-exempt function income is all income that is not exempt function income. Non-exempt function income includes traditional income, such as income from investments and food and beverage sales to non members, as well as income from non-traditional activities, such as the sale of liquor to members for off premises consumption.

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TAXPAYER'S POSITION

The organization agrees to a revocation of exempt status. However, they also agree that if revocation is not upheld, Form 990-T's should be prepared to disclose non member income and expenses.

GOVERNMENT'S POSITION

The country club earns non member income through the selling of green fees, renting of golf carts, and the renting of its banquet hall and snack bar. Records are not kept per Revenue Procedure 71-17, concerning member and non member income.

As such, the organization is subject to Unrelated Business Income Tax as described in section 512 of the Internal Revenue Code.

CONCLUSION

As an alternative position, the income classified as non exempt function income should be unrelated business taxable income, reported on Form 990-T.